

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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PENTAIR WATER TREATMENT (OH)
COMPANY (formerly known as
ESSEF CORPORATION) and
PENTAIR WATER POOL & SPA, INC.
(formerly known as PAC-FAB,
INC.) and PENTAIR WATER BELGIUM
BVBA (formerly known as STRUCTURAL
EUROPE N.V. formerly known as SFC),

Plaintiffs,

08 Civ. 3604 (BSJ)

-against-

FIDELITY & CASUALTY INSURANCE
COMPANY OF NEW YORK and
CNA INSURANCE COMPANIES,

Defendants.

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**REPLY DECLARATION IN FURTHER SUPPORT OF
DEFENDANTS' MOTION TO DISMISS THE COMPLAINT**

ROBERT M. KAPLAN, under penalty of perjury, declares as follows:

1. I am an attorney at law, admitted to practice before this Court and a member of Ferber Chan Essner & Coller, LLP, attorneys for defendants The Continental Insurance Company, as successor by merger to defendant Fidelity & Casualty Insurance Company of New York ("Fidelity") and CNA Insurance Companies.
2. I submit this reply declaration in further support of defendants' motion for an order (i) pursuant to F.R.C.P. 12(b)(6), dismissing the third claim for relief in the complaint on the ground it fails to state a claim upon which relief can be granted and (ii)

pursuant to F.R.C.P. 12(b)(6) and 17(b), dismissing CNA Insurance Companies as a defendant on the ground it lacks the capacity to be sued in this action.

3. As set forth in plaintiffs' opposing declaration and memorandum of law, following the service of defendants' motion, plaintiffs served a first amended complaint. Defendants agree that the service of this amended pleading moots their motion with regard to plaintiffs' original complaint.

4. Accordingly, defendants will now answer, or move to dismiss, plaintiffs' first amended complaint.

Dated: New York, New York
June 23, 2008

/s/Robert M. Kaplan
ROBERT M. KAPLAN